

REMARKS

In the Office Action dated December 28, 2009, claims 2, 3, 5-7, 9 and 10 were rejected under 35 U.S.C. §112, second paragraph. This objection was based on language in claim 9 regarding the limitation describing the dead space, which the Examiner stated is indefinite, and the lack of an antecedent basis for "said bypass path" and "a gas bypass path" in claim 9. The Examiner also stated the limitation of "at respective bypass connections" in claim 9 lacks antecedent basis. Claim 10 was objected as well because the Examiner stated the description of the dead space therein is indefinite.

Additionally, the rejection of claims 2, 3 and 9 under 35 U.S.C. §102(b) as being anticipated by Westenskow was maintained, as was the rejection of claims 5-7 and 10 under 35 U.S.C. §103(a) as being unpatentable over Westenskow in view of Perhag.

Applicant notes with appreciation the telephone interview courteously afforded the undersigned representative of the Applicant on March 23, 2010, in which the Examiner's supervisor also participated. The above rejections were discussed, and the following summarizes the discussion that took place in the telephone interview.

The primary topic discussed in the telephone interview was the Examiner's concern that claims 9 and 10 were not consistent with each other, and possibly were not consistent with the disclosure in the specification. In response, each of claims 9 and 10 has been editorially amended so that those claims are fully consistent with each other, as well as with the disclosure. These changes in the claim language are also submitted to overcome the rejections under §112, second paragraph.

The description of the “dead space” that is present in claims 9 and 10 is fully supported in the specification as originally filed in the paragraph beginning at page 5, line 13 of the substitute specification (paragraph [0034] of the published application).

Each of independent claims 9 and 10 has been amended to state that the dead space has first and second opposite sides, with the first side being closer to the patient than the second side. The bypass path has been stated to be connected to respective bypass connections at these opposite sides of the dead space, and a gas flow of the exhaled gas from the dead space is generated through the bypass path from the second side to the first side thereof. The gas that has passed through the carbon dioxide absorber from the bypass path is returned to the primary gas flow path at the first side of the dead space (the side closer to the patient). This is fully supported in the specification as originally filed in paragraph [0036] of the published application.

Therefore, it is correct to state that the gas in the dead space is rebreathed by the patient, although the rebreathed gas has been cleansed of carbon dioxide.

The Westenskow reference, for the reasons extensively discussed in Applicant’s previous responses, does not have a “dead space” of the type disclosed in the present application, and described in claims 9 and 10, and does not address the problem of carbon dioxide-containing gas in such a dead space being rebreathed by the patient. Moreover, the Westenskow reference does not disclose a bypass path that bypasses the dead space as set forth in claims 9 and 10 of the present application.

In the previous telephone interview that took place on November 17, 2009, Applicant believes that it was agreed that the Westenskow reference does not

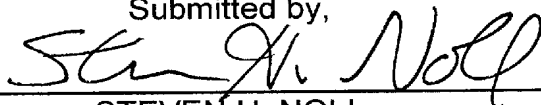
disclose a dead space as disclosed and claimed in the present application but, as noted above, the Examiner in the most recent telephone interview expressed concerns as to whether the claims, in the form on which the December 28, 2009 Office Action was based, accurately described the various connections of the bypass path with respect to the dead space and with respect to the primary gas flow path. Since Applicant believes that these connections are now accurately set forth in the claims, Applicant believes that the previous arguments submitted in support of patentability of those claims are correct, and reference is made to Applicant's previous responses with regard to those arguments in support of patentability. It would be superfluous to again repeat those arguments herein.

Those arguments also respond to the obviousness rejection based on Westenskow in view of Perhag. For the above reasons, even if the Westenskow reference were modified to employ a reflector as disclosed in Perhag, the subject matter of claims 5-7 and 10 still would not result.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,

 (Reg. 28,982)

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